LIM BOON HIOK & ORS. v. LOKE WAN THO

[O. C. J. (Brown J.) January 13, 1955]

[Singapore — Motion in Suit Nos. 12, 13 & 14 of 1955]

Landlord and Tenant — Control of Rent Ordinance, 1953, s. 26 — Prohibition against sub-letting — Judgment enforceable against sub-tenants — No necessity for sub-tenants to be made party to proceedings.

The defendant in this case had obtained an order in the District Court for possession against the chief tenant and the judgment was made enforceable against the sub-tenants who are the present plaintiffs. They now apply by Motion to restrain the defendant from evicting them on the ground that they were not a party to the proceedings.

Held: the learned District Judge had grounds for being "satisfied" from the document prohibiting sub-letting which was produced before him. It was not necessary for the sub-tenants in this case to be made a party to the proceedings because they have never acquired any rights.

[Editorial Note: Control of Rent Ordinance, 1953, s. 26(1) reads: "Where any order or judgment for the recovery of possession has been obtained against any tenant of premises, such order or judgment shall not be enforceable against any sub-tenant of such tenant unless the Court is satisfied that such tenant was prohibited by the terms of his tenancy from sub-letting or that such sub-tenant has used the premises for illegal or immoral purposes. Every order or judgment for possession made against any tenant shall declare whether it shall be enforceable against any sub-tenant or not."]

Case referred to:—

(1) *Ng Eng Kang v. Sitharam & Anor.* (1952) M.L.J. 155.

MOTION to restrain eviction.

N. N. Christopher for the plaintiffs.

A. P. Rajah for the defendant.

Cur. Adv. Vult.

Brown J. : — Before a Court can make an order or judgment enforceable against the sub-tenants it is an absolute requirement of Section 26 of the Control of Rent Ordinance 1953 that the Court must be "satisfied" that the tenant was prohibited by the terms of his tenancy from sub-letting or that the sub-tenant has used the premises for illegal or immoral purposes. It is not disputed that the learned District Judge had before him the document by which sub-letting was prohibited. He therefore had grounds for being "satisfied", as the section requires.

But the applicant relies on the case of *Ng Eng Kang v. R. Sitharam & Anor.*[1] in which it was said that as the sub-tenant was not a party to the proceedings (as in the present case) the Court was wrong in making the order enforceable against the sub-tenant. The distinction between that case and the present is that in that case there was no prohibition at the time of the sub-letting. The sub-tenants had therefore acquired rights. In the present case the sub-tenants have never acquired rights.

The motion is dismissed with costs.

Order accordingly.

Solicitors: *Christopher & Francis; Tan Rajah & Cheah.*

LAU CHEE KUAN (f) v. CHOW SOONG SEONG & ORS.

[C. A. (Mathew C.J. (F.M.), Murray-Aynsley C.J. (S) and Pretheroe J.) January 6, 1955]

[Ipoh—F.M. Civil Appeal No. 27 of 1954]

Libel and Slander — Defamation — False statement in newspaper to the discredit of plaintiff — Principles to be applied in determining whether an article is or is not defamatory — "Reasonable man" — Construction.

This appeal arose out of the dismissal of an action for libel and a claim for damages in connection with an article entitled "Midwife met Ghost—Notes Turned into Hades Currency," which appeared in the issue of the Chinese paper Feng Pao dated March 27, 1953. Briefly, the article stated that one night a ghost dressed as a female servant went to the appellant's Maternity Home and told her that her mistress was about to deliver and wished to engage a midwife. The appellant was taken to a large mansion and there the mistress of the house gave birth to a male child. The appellant was then paid $200 for her services and left the mansion. On turning back her head she found that the beautiful house had disappeared and she was surrounded by tombs; it was the Hokkien Cemetery. She hurried to the main road in a state of great fright, and on arriving at her house found that the $200 had turned into a heap of ashes of burnt Hades currency. The article went on to say that since that night the appellant was ill and had not recovered, and that her illness was due to fright.

The learned trial Judge dismissed the claim on the ground that in the eyes of the average right thinking man the article did not tend to lower the reputation of the plaintiff (appellant) or disparage her in the way of her profession and was not therefore defamatory.

Held: the article, however viewed, was defamatory of the appellant. The opinion of those who believed in ghosts could be discounted, but the opinion of all other persons must be that here was a silly woman who believed in ghosts to such an extent that she made herself ill and was unable to pursue her profession as a midwife. The false statement made was to her discredit and she had been ridiculed and brought into contempt. She was therefore entitled to succeed in her claim.

Case referred to:—

(1) *Leetham v. Rank* (1912), 57 Sol. J. 111.

COURT OF APPEAL.

C. W. Shuttleworth for the appellant.

N. L. Macassey for the respondents.

Cur. Adv. Vult.

Mathew C.J. (with whom **Pretheroe J.** concurred):— This appeal arises out of the dismissal of

a claim for defamation. The article complained of appeared in the issue of the Chinese paper Feng Pao dated 27th March 1953, and is entitled "Midwife met ghost—Notes turned into Hades currency". The article described how the appellant, a midwife, was taken to a big house at night where she delivered a male child. When she had completed her work she was paid $200. On leaving the house she turned round to look at it and found the house had disappeared and that she was in a cemetery. She hurried to the main road in a state of great fright, and on arriving at her house found that the $200 in notes had turned into a heap of ashes of burnt Hades currency. So great was her fright that she had been in bed ill ever since.

The learned trial Judge dismissed the claim on the ground that in the eyes of the average thinking man the article did not tend to lower the reputation of the plaintiff or disparage her in the way of her profession and was not therefore defamatory.

The test of what constitutes a libel is summarised as follows in *Gatley on Libel and Slander*, 3rd edition (at page 14):—

"Any written or printed words which tend to lower a person in the estimation of right-thinking men, or cause him to be shunned or avoided, or expose him to hatred, contempt or ridicule, constitute a libel.

Scandalous matter is not essential to make a libel. It is enough if the words render the plaintiff contemptible or ridiculous, or tend to degrade or lower him in the estimation of men, whose standard of opinion the Court can properly recognise, or to hinder mankind from association or having intercourse with him."

In my view the article, however viewed, is defamatory of the appellant. The opinion of those who believe in ghosts we can discount and not apply a seventeenth century English standard, but the opinion of all other persons must be that here is a silly woman who believes in ghosts to such an extent that she makes herself ill and is unable to pursue her profession as a midwife. A false statement has been made about the appellant to her discredit and she has been ridiculed and brought into contempt. The appellant is therefore entitled to succeed in her claim. No useful purpose can be served in referring the case back for consideration of the damages to be awarded, and as this Court has power to dispose of the matter, I would award $500 damages.

I would accordingly allow the appeal with costs here and in the Court below and order that judgment be entered for the appellant in the sum of $500. The deposit in Court will be returned to the appellant.

Murray-Aynsley C.J. (S.):—I agree with the judgment of the Chief Justice of the Federation of Malaya.

I think that the passage cited from *Gatley* correctly sets out the law and is in accordance with common sense.

Certain authorities tend to restrict the scope of defamation by imposing the test of the effect on a hypothetical "average reasonable man". Farwell J. in *Leetham v. Rank*[1], said it was not enough to prove that the words rendered the plaintiff obnoxious to a limited class; it should be proved that the words produced a bad impression on the minds of average, reasonable men.

The average man does not exist in nature. "Average" is only a mathematical concept and does not correspond with any particular instance. The expression "reasonable man" merely means people who agree with one. At the present time such a diversity of opinion exists on all fundamental questions that it is impossible to select any one point of view and treat it as that of the reasonable man. One must consider the "milieu" of the plaintiff in any particular case and consider the outlook of law-abiding persons in that milieu. For instance, it would be clearly a libel to announce that a Catholic priest had married, whether the majority of the people set any store on clerical celibacy or not. Equally to say of a Unionist member of parliament for Northern Ireland that he had gone on a pilgrimage to Lourdes. I think the only *criterium* that the Courts can adopt is that of the law-abiding citizen. Legality is the only standard which Courts can recognize.

I agree with the proposed order.

Appeal allowed.

Solicitors: *Maxwell, Kenion, Cowdy & Jones; Battenberg & Talma.*

ZAINAB BINTI ISMAIL v. MARIMUTHU & ANOR.

[O. C. J. (Hill J.) January 13, 1955]

[Alor Star—Civil Appeal No. 191 of 1953]

Damages—Shock—Mother seeing daughter killed by lorry—Courts Ordinance, 1948—Action for loss of expectation of life.

The 1st defendant, a lorry driver, drove a lorry belonging to the 2nd defendant along a quiet and somewhat infrequented side street at a speed and recklessly and noisily. As a result of his negligent driving, which was proved, the plaintiff's daughter was killed while washing clothes at a stand pipe in the side street. The evidence showed that the plaintiff actually saw the accident, as a result of which she suffered from shock and was still sick nearly two years after the accident. The plaintiff, *inter alia*, claimed damages for shock and illness, and for loss of expectation of life of